

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In Band On Channel (IBOC))	
Digital Radio -- NAB Proposal)	FCC Docket 99-325
For Separate IBOC Antennas)	

REPLY COMMENTS OF THE 42 ANTI-IBOC PETITIONERS

These Reply Comments are submitted on behalf of the 42 parties to an October 25, 2002 Petition For Reconsideration in FCC Docket 99-325. That Petition seeks withdrawal or suspension -- pending a comprehensive review and evaluation of alternatives -- of the October 11, 2002 Order authorizing “interim” broadcasts with In Band On Channel (IBOC) Digital Radio.

15 months later, the Commission has still neither granted nor denied this Petition, or addressed it in any other manner.

The 42 Petitioners are now responding to the Commission’s request for public input on a proposal, by THE NATIONAL ASSOCIATION OF BROADCASTERS (NAB), that would allow duplicate programming on separate IBOC antennas.

1. We second the contention made in January 12, 2004 Written Comments of David Burstein, representing himself and DM RADIO of New York City, that action on the NAB proposal for separate antennas is premature.

Mr. Burstein and DM RADIO make an excellent case that any consideration of separate IBOC antennas should be preceded by “a proceeding to allocate the rights to broadcast”. Needless to say, such a proceeding has not been commenced or even considered, let alone concluded.

“The worst possible use” of IBOC technology, according to Mr. Burstein and DM RADIO, “is simply to rebroadcast the current stations ... The key principle is that the second broadcast station should be original and different from the programming currently on the air in that city.” The NAB proposal is, of course, completely counter to this principle.

Mr. Burstein and DM RADIO add that:

“The FCC has not yet determined the final use of this [IBOC] resource, and should not be constrained by those who are currently testing new technology.”

At a time when the FCC has formed a special LOCALISM TASK FORCE to promote localism, including diversity of local *programming*, the FCC’s adoption of the NAB’s proposal would be a step backward -- toward media consolidation and homogeneous programming.

For this reason, we are sending a copy of these Reply Comments to the FCC’s LOCALISM TASK FORCE, for inclusion in FCC Docket RM-10803.

2. *In addition to preceding a proceeding on “allocating the rights to broadcast”, consideration of the NAB proposal is premature for 4 other reasons as well.*

A. As noted earlier, the Commission has not yet acted upon the October 25, 2002 Petition For Reconsideration. Having ignored this Petition, rather than either granting or denying it, the Commission has left the Petition as “unfinished business”. Until the issues raised in the Petition have been officially, and directly, recognized and addressed -- favorably, unfavorably or through some attempted “compromise” -- those issues are legally still “Pending”. It is contrary to the Constitutional principles of “due process of law” for the FCC to simply *bypass* objections, without refuting them or even recognizing their existence, and proceed directly to other matters whose equitable resolution depends upon *first* acknowledging, and deciding, issues that were raised earlier.

B. The Commission has also failed to grant, deny or address in any other manner the April 5, 2003 Petition For Rulemaking by Leonard Kahn, P.E. of KAHN COMMUNICATIONS in New York State. This Petition brought before the Commission a proposed new Digital Radio technology -- Compatible AM Digital Radio, trademarked as CAM-D -- that reportedly avoids the AM Band interference caused by the IBOC version of Digital Radio. While the 42 Anti-IBOC Petitioners can neither confirm or deny this claim, we believe it deserves the comparative evaluation with IBOC that Mr. Kahn has requested.

It would be premature, if not irresponsible, for the Commission to move forward with further IBOC implementation when claims of a lower-interference Digital Radio alternative remain untested, and for that matter unacknowledged.

C. Except for a cursory comment in the “Interim” IBOC Approval Order of October 11, 2002, the FCC has never responded to the multi-party Request For An Environmental Impact Statement (EIS). This multi-party Request was filed on July 18, 2002. The National Environmental Policy Act of 1969 (NEPA) requires at least the preparation of an Environmental Assessment (EA) when such a Request has been made, but no such action was taken by the FCC. Further, even the cursory comment in the “Interim” IBOC Approval Order did not mention some of the issues that had been raised in the EIS Request: most notably, the environmental impact from premature disposal of more than 500 million Analog radios, due to *mandatory* shifts to IBOC radio technology.

D. The Commission has also failed to grant, deny or otherwise address an April 15, 2002 multi-party Petition For Rulemaking for *competitive consideration* of IBOC technology. The Petition seeks *comparative* testing and evaluation of IBOC alongside Eureka 147, Digital Radio Mondiale and existing Analog technologies. Today, CAM-D technology would be added to that list of alternatives to IBOC.

3. *In short: The Commission has granted “interim” authorization of IBOC broadcasts without first deciding, or even acknowledging, various request On The Record for comparative testing and evaluation of all Digital Radio alternatives (including Analog radio) and for an assessment of environmental consequences. In addition, as David Burstein and DM RADIO have recently noted On The Record, the Commission has also acted without first considering “the proper way to allocate the rights to broadcast”.*

Having come this far without addressing -- or even acknowledging -- these matters, the Commission is now considering a second step, deeper into the thicket of permanent, comprehensive IBOC implementation.

We urge the Commission to take two steps back instead -- by reviewing and deciding the issues which have been raised On The Record, but totally ignored so far.

For the reasons set forth herein, the 42 Anti-IBOC Petitioners urge the Commission to deny the NAB proposal, suspend the “interim” authorization of IBOC transmissions and address instead the 4 documents referenced above, as well as the Burstein/DM RADIO proposal for proceedings on “allocating the rights to broadcast”.

Respectfully submitted,

Don Schellhardt, Esquire
SCHELLHARDT ADVOCACY SERVICES
P.O. Box 186
Cheshire, Connecticut 06410
pioneerpath@earthlink.net
203/757-1790
"Backup": 203/756-7310

Dated: _____

January 23, 2004